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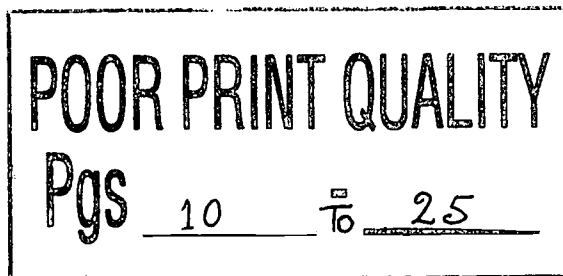
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## ABSTRACT

Since 1987, the Fort Peck Assiniboine and Sioux Tribes have been actively combating child abuse by implementing programs for prevention and treatment. This paper outlines the history of this effort and current programs and procedures for countering child abuse and neglect. Sections cover: (1) recognition of child abuse problems on the Fort Peck Reservation in the 1980s; (2) federal funding of a sexual abuse victims treatment program on the reservation in 1990; (3) the interagency agreement child protection team and its assessment and evaluation processes; (4) child protection helping agencies and the process for resolution of interagency conflict; (5) definitions of child abuse and neglect in the Fort Peck Tribes Comprehensive Code of Justice; (6) an informal process for referral of children at risk of abuse or neglect, aimed at family strengthening and preservation; (7) the formal process for court hearings and decisions; (8) four tribal prevention and treatment programs for families and children at risk (providing culturally relevant counseling and therapy to children and family members, legal advocacy, and preparation for court); and (9) the influence of welfare payments and public housing regulations on family behavior. (SV)

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# Tribal Authority for Prevention and Treatment of Child Abuse

## Rights and Responsibilities

By

Patricia McGeshick

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## TABLE OF CONTENTS

### TRIBAL AUTHORITY FOR PREVENTION AND TREATMENT OF CHILD ABUSE RIGHTS AND RESPONSIBILITIES

#### PART I

1. Introduction.....page 1
2. History of Child Abuse and Neglect.....page 2  
Fort Peck Assiniboine and Sioux Tribes
3. Inter-Agency Agreement.....page 7  
Child Protection Team
4. Chart "Child Protection Helping Agencies".....page 10 (a)
5. Legal Definitions.....page 11  
Juvenile and Criminal
6. Chart "Legal System Process on Child Abuse.....page 17 (a)  
and Neglect"
7. Tribal Resources.....page 18
8. Chart "Center of Services For Children.....page 20 (a)  
and Families in Crisis
9. Social Environment.....page 22

#### Part II

Video "Center of Services for Children and Families in Crisis"

BY: PATRICIA MCGESHICK

# TRIBAL AUTHORITY FOR PREVENTION AND TREATMENT OF CHILD ABUSE RIGHTS AND RESPONSIBILITIES

## INTRODUCTION

This project is presented in two parts. The first part is a taped video called, "Center of Services For Children and Families in Crisis." The second part is a report titled, "Tribal Authority for Prevention and Treatment of Child Abuse" which contain materials describing the tribal authorities and legal definitions of child abuse and neglect. Also included is a brief history of child abuse, neglect, treatment and prevention on the Fort Peck Indian Reservation.

The video contains short descriptions of each agency's roles and responsibilities in referrals, treatment and legal procedures of child abuse and neglect. From each involved agency, a taped interview was conducted. The participants are as follows:

Wilma Desjarlais, Acting Supervisor, Bureau of Indian Affairs, Division of Social Services.

Nelson Heart, Criminal Investigator, Bureau of Indian Affairs, Law Enforcement Division.

Bryce Wildcat, Guardian Ad-Litem, Family Advocacy Program, Fort

Peck Tribes.

Clayton Reum, Special Tribal Prosecutor, Tribal Court, Fort Peck Tribes.

Diane Bergstein, Licensed Counselor, Sexual Abuse Victims Treatment Program, Fort Peck Tribes.

Tracie Zoanni, Data Technician, Sexual Abuse Victims Treatment Program, Fort Peck Tribes.

Ron Jackson, Victim Outreach Specialist, Victim Assistance Program, Fort Peck Tribes.

The reason for selecting this complex topic is that I was instrumental in the initial development of the Sexual Abuse Victims Treatment Program and served as the first program director. I continue to occupy this position. I was a participant in the planning for the revision of the Child Protection Inter-Agency Agreement<sup>1</sup> for which I was appointed facilitator by the Fort Peck Tribal Chairman in 1992.

## HISTORY

In 1987, the Fort Peck Assiniboine and Sioux Tribes launched a campaign against child abuse and neglect and since then have been actively participating on preventative measures in combating child abuse by implementing programs for prevention and treatment.

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<sup>1</sup>Formally termed as an Inter-agency agreement, correctly it should read Inter-government agreement. It is an Inter-governmental agency agreement with the Federal government (IHS and BIA), State of Montana and Fort Peck Tribes.

The issue of child abuse and neglect provide very disturbing facts on the Fort Peck Reservation. The Fort Peck Tribes Sexual Abuse Victims Treatment Program through its statistical study has shown that one child out of seven has been abused or neglected.<sup>1</sup> The history of child abuse on the reservation as reported by the Indian Health Service confirms that from 1980 to 1983 there were 300 cases of child abuse and neglect reported. Because these cases were not resolved, a Special Investigative Team composed of individuals from the Bureau of Indian Affairs and the Indian Health Service from Washington D.C. interviewed me during the time I was the Tribal Prosecutor and raised questions as to the prosecution of child abuse and neglect. Who was responsible for Indian children when they have become victimized? The Bureau of Indian Affairs, Indian Health Service and the Tribal Court were questioned regarding the same referrals. There was no coordination of services. My response when interviewed was who was responsible to submit the cases to the prosecutor's office? If the cases were being reported to the proper authority, who was the proper agency to receive the referrals? There was no mechanism for handling and referring cases to various service providers. Who has the responsibility for investigation and could it be a Federal crime in

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<sup>1</sup>Statistical data from Fort Peck Tribes Sexual Abuse Victims Treatment Program 1991 to present.

which the Federal Bureau of Investigation should be called upon to investigate? Who is responsible for the protection of children if they were abused? The Investigative Team concluded that the present system was inadequate, misdirected and misinformed as to the handling of child abuse and neglect cases.

When child abuse surfaced on the reservation in 1983, it was very shocking. I remember having difficulty believing that children were being abused in my own community and we were condoning it. As the Tribal Prosecutor, I knew nothing about the laws pertaining to child abuse. In fact, there were no Tribal laws.

The Fort Peck Tribes recognized the need for programs designed to address child abuse and neglect, and took appropriate steps to implement a project to assist and prevent further victimization of children.

The Fort Peck Tribes were given special Congressional funding because of the magnitude of the child abuse problem. In November of 1987, through an inter-agency agreement the Fort Peck Tribes, the Bureau of Indian Affairs and the Indian Health Service provided a solution to the child abuse problem. A "super" team was created and the primary duties of this team was to process all child abuse and neglect referrals. The "super" team was to receive all child abuse referrals, conduct the investigation for substantiation and follow up with treatment if necessary. The Bureau of Indian

Affairs was to provide a social worker and investigator. The Fort Peck Tribes supported the Special Prosecutor and the Indian Health Service supported the mental health professionals. This project ended in 1989 after two years of some success. Funding and manpower were the major obstacles for the "super" team to continue efforts in coordinating child abuse referrals.

In 1989, the Fort Peck Tribes testified before the United States Select Committee on Indian Affairs, regarding the need for continued services in the area of child abuse and neglect and discontinuation of funding.

In November of 1990, Public Law 101-630, Title IV was passed by Congress. The Act was entitled, "Indian Child Protection and Family Violence Prevention Act". This law stated that there were grossly under reported incidents of child abuse on reservations. The law supported the "Child Abuse Prevention and Treatment Grant Programs" to provide funding for establishment of treatment programs on Indian reservation for victims of child sexual abuse. Financial Assistance was made available to any Indian tribe for development of Child Protection and Family Violence Programs. This Act required that each reservation create their own local Child Protection Teams.

In November of 1990, the United States Appropriations Committee provided funding for a five year project for the



development of a model treatment program aimed at sexually abused victims and their families.' The Fort Peck Tribes submitted a grant to the Bureau of Indian Affairs for the purpose of funding the model treatment program.

The Fort Peck Tribes were awarded \$150,600 for the Sexual Abuse Victims Treatment Program.' The SAVTP is designed to provide immediate access to treatment for sexually abused victims and their extended family. The SAVTP staff recognizes that healing is a long term process which requires the coordinated efforts of many other agencies. Education of child abuse has brought about awareness in the communities. Denial hinders progress in the program and is very difficult to overcome. The intent of the SAVTP is to provide a more consistent, compassionate counseling process for victims and their families. The SAVTP had to be accepted in the community before an effective program could be made. The SAVTP will be completing their five year model project in February of 1995. The SAVTP continues to look for funding sources for ongoing services. Whether the Fort Peck Tribes fund the program as part of their annual budget after 1995 is unknown and staff members are concerned as to what will happen to the children.

#### INTER-AGENCY AGREEMENT CHILD PROTECTION TEAM

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'Amendment to H.R. 3724, Section 806 Child Sexual Abuse Treatment Program 1990.

'Done by resolution Fort Peck Tribes implementing the Sexual Abuse Victims Treatment Program.

The team facilitator is appointed by the Tribal Chairman, I have been facilitating the meetings since the signing of the Agreement. As the facilitator, I am responsible to implement a case tracking system, coordinate the schedule of meetings, develop procedures for feedback, evaluation and improvement. The facilitator maintains a data base through the SAVTP data technician and the data is entered daily.

#### ASSESSMENT PROCESS

Cases are prioritized during the assessment process by the servicing agency using a risk assessment compatible with the Child Abuse Investigation Protocol. In making the assessment process regarding the investigation and protection of alleged child abuse and neglect, there may be many outcomes. The servicing agency will examine the degree of harm to the child and how the abuse happened.

The servicing agency will use all information and evidence gathered during the investigation available regarding the incident, the child, the parents or guardians, and the family home. After assessing validity of each allegation, a decision is made to see whether a child protection issue exists.

#### EVALUATION PROCESS

Evaluation of the family and child's progress for continued

ongoing services is monitored by the Child Protection Team. The Team depends on input from all agencies for the evaluation process. Ongoing services refers to the activities performed after a suspected case of abuse or neglect has been substantiated. The activities include conducting a social assessment, service treatment planning, implementation of service treatment plan, and assessing the family's progress and terminating services.

Recommendations are made using the following guidelines of the Child Protection Team agreement:

" (a) abuse or neglect does exist and the family should be offered services. One agency may be appointed to carry out this responsibility;

(b) abuse or neglect is unsubstantiated and there is insufficient evidence to prosecute the case. The case may remain open for future disclosures and follow-up;

(c) abuse or neglect does exist and the family will cooperate with the voluntary services planned by the social service agency;

(d) abuse or neglect does exist and services and treatment is required;

(e) abuse or neglect does exist and prosecution may recommend a deferred prosecution with strict stipulations which may require assistance from agencies involved."

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The Inter-Agency Agreement Child Protection Team, Indian Health Service, Bureau of Indian Affairs, State of Montana, and Fort Peck Tribes, dated November 1992.

## CONFLICT RESOLUTION

When there are many service providers and service provider has their own personal goals to carry out on behalf of the child there may not always be a general consensus. Critical differences of professional opinion will be resolved by the team facilitator and service agency supervisor who evaluates the assessment process. This evaluation will be presented back to the Child Protection Team for re-evaluation. The social service agency is responsible for the final decision.

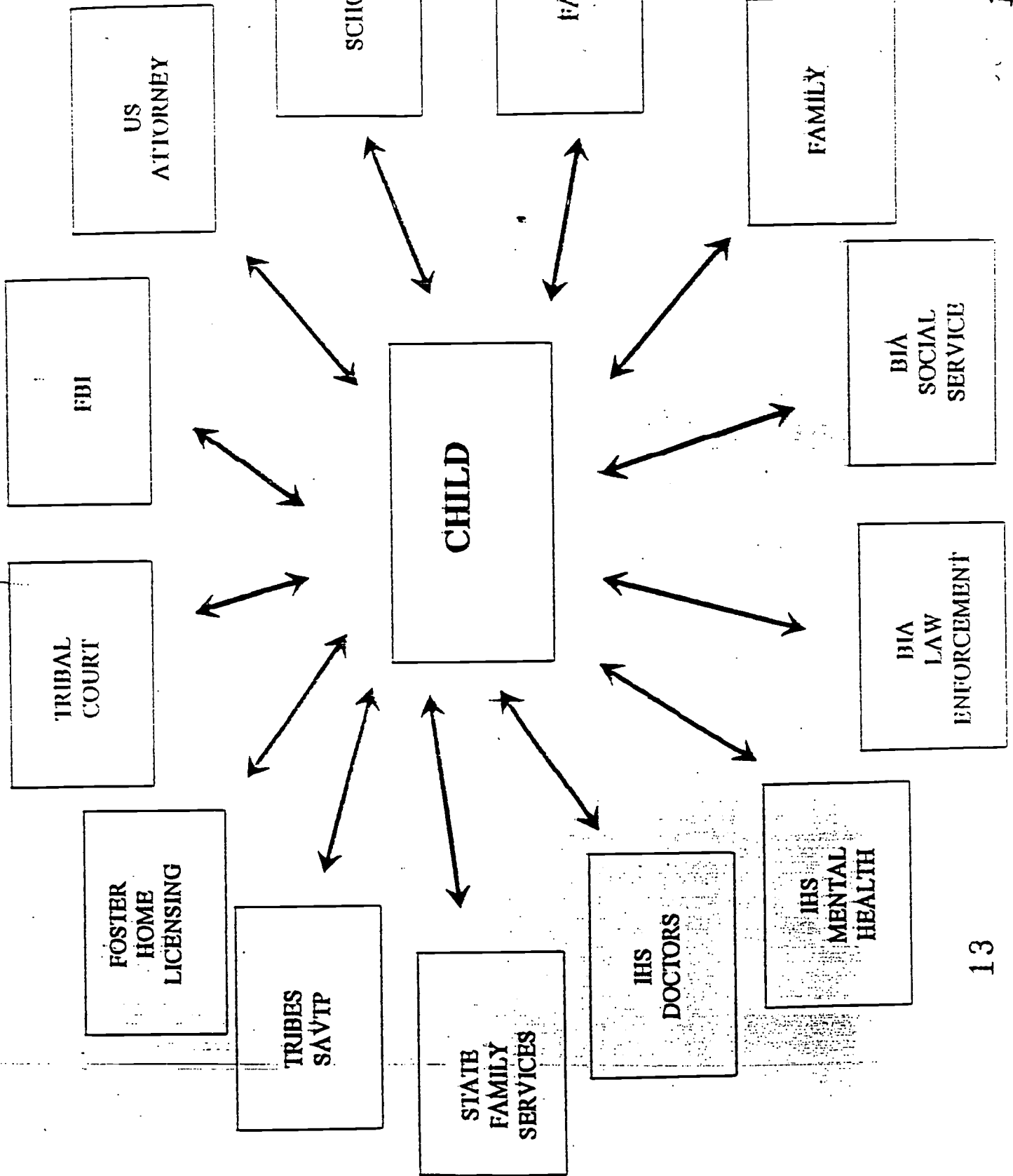
The follow illustration titled "Child Protection Helping Agencies" is shown on 10(a).

## DEFINITIONS

What is child abuse? What is child neglect? On many occasions I have asked the same questions. Is child abuse leaving your child home alone while out drinking? Is child abuse hitting, slapping, your child. If you call you child names such as "your useless, dumb, stupid", is this abuse? The answer to these questions maybe yes. There are two legal definitions cited in the Criminal Section and two cited in the Juvenile Section of the Fort Peck Tribes Comprehensive Code of Justice (CCOJ).<sup>2</sup>

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<sup>2</sup>Fort Peck Tribes Comprehensive Code of Justice 1983.



## CRIMINAL OFFENSES

CCOJ Criminal Offenses reads as follows:

"1. Title III, Chapter II, Section. 214(c) (Abuse of a child). Any person having the responsibility for the care and welfare of a child under eighteen years of age who engages in the abuse of that child fails to make reasonable efforts to prevent the infliction of abuse by another of that child shall be guilty of abuse of a child.

An abused child is a child who has suffered or is likely in the immediate future to suffer physical and/or emotional harm as a result of any person inflicting or failing to make reasonable efforts to prevent the infliction of physical and/or emotional injury upon a child including excessive corporal punishment or act of sexual abuse or molestation.

2. Title III, Chapter II, Section 214(d) (Neglect of a child). Any person having the responsibility for the care and welfare of a child under eighteen years of age who neglects that child as defined in Title V, Section 102(d) of the CCOJ shall be guilty of neglect of a child."

## JUVENILE CODE

CCOJ Juvenile Code reads as follows:

"1. The definition cited in the CCOJ, as to what is a child? Any Indian under eighteen years of age.

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Fort Peck Tribal Comprehensive Code of Justice. Fort Peck Tribes, Poplar, Mt., 1983, pp.12-15, Title III.

2. Title V, Chapter I, Section 102(b) (Abused child). A child who has suffered or is likely in the immediate future to suffer serious physical or emotional harm as a result of a parent, guardian or custodian inflicting or failing to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment or an act of sexual abuse or molestation.

3. Title V, Chapter I, Section 102(d) (Neglected child). A child:

- (a) whose parent, guardian or custodian fails to provide the minimal care which a reasonably prudent parent would provide in the same or similar circumstances for the subsistence, education, and welfare of the child; or
- (b) who has special physical or mental conditions for which the child's parent, guardian or custodian neglects or refuses to provide a reasonable level of special care; or
- (c) whose parent, guardian or custodian is unable to discharge his/her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental capacity.

A child shall not be deemed neglected if the reason for failing to provide adequate care for the child is the indigence of the parent or guardian.

Minimal care in the Tribal Code is defined as the provision of adequate food, clothing, shelter, medical care, and day-to-day supervision. In determining whether minimal care has been

provided, the court shall apply the standards prevailing in the community. The Code reads as follows:

"4. Title V, Chapter I, Section 102(k) (Diversion). A course of remedial action taken in matters arising under this Chapter designed to avoid formal Court action and is in the best interest of the child involved.

5. Title V, Chapter III, Section 302(c) (Informal Resolution).

(1) Abandoned, neglected, or abused children and status offenders. The juvenile officer may recommend counseling, treatment, or such other disposition of an abandoned, neglected, or abused child or status offender which in the officer's opinion is in the best interest of the child."

Such recommendation shall be implemented, without Court action, only upon the consent of the parent, guardian, or custodian with the knowledge that consent is voluntary. Upon receiving consent, the juvenile officer shall inform the Court that the case has been resolved informally. Informal resolution shall not include any disposition which separates the child from parent, guardian, or custodian. Upon successful completion of the recommended program, the case shall be dismissed. No diversion program shall exceed (6) months".<sup>10</sup>

#### INFORMAL PROCESS FOR "AT RISK CHILDREN"

<sup>9</sup>Fort Peck Tribal Comprehensive Code of Justice, Fort Peck Tribes, Poplar, Mt., 1983 pp.4, Title V.

<sup>10</sup>Fort Peck Tribal Comprehensive Code of Justice, Fort Peck Tribes, Poplar, Mt., 1983, pp.1-3, Title V.



This section deals with children who are at risk of being further neglected or abused. Initially, a referral is usually provided by an anonymous source due to noninvolvement. The referral is directed to a Social Service Agency or a Law Enforcement officer. Also many referrals are directed to our office and we in turn, contact the appropriate agency. Second, the referral is cross reported with the social worker and law enforcement office who conducts the investigation as a team.

Upon the completion of the investigation, the referral is either unsubstantiated, or substantiated. If the investigation is unsubstantiated the issue is closed. However, if substantiated, the social worker has the option to implement an informal resolution plan with the legal custodian, parent(s) or guardian of the child.

The purpose of the informal resolution or diversion is to keep the family as a unit rather than removal and placement. Also, it prevents formal Court intervention. Based on the opinion of the social worker, who is knowledgeable in family preservation, will create a plan which is workable for the family as a whole and see that the plan is fulfilled, as required by the Tribal Code.

An informal resolution may warrant a voluntary Service Treatment Agreement which is a signed contract with the family in question and the Social Service Agency. This Agreement addresses

areas that need improvement to make healthier families.

The social worker will recommend specific tasks such as parenting classes, family counseling or therapy, drug and alcohol evaluation/treatment, mental health evaluation/treatment and referrals to other helping agencies. However, in the majority of cases this does not take place. Beyond the diversion process as outlined in the Code and which is rarely enforced there are no other alternatives strengthen families.

#### FORMAL PROCESS

When a child has been taken into custody by a Social Service agency, Law Enforcement officer or Juvenile officer a petition must be filed with the Tribal Court within twenty-four hours. The petition must state the name, address, and telephone number of the person filing the petition. It must also state the guardian, and why it is believed that the child is abused neglected, or abandoned, with supporting credible evidence.

The Fort Peck Tribes received a grant from the Health and Human Services in which a Guardian Ad-Litem (GAL) has been appointed and currently is responsible for filing the civil

petition." The petition is based on a report submitted to the GAL by a social services representative. The report and petition is cross checked with the Special Prosecutor for possible criminal prosecution. The GAL represents the Tribes and acts on behalf of the best interest of the child. The GAL defines the best interest of the child on a case by case basis by reviewing the family history. Legally, the best interest of the child is not defined. The Courts have an understood policy whereby it is determined by each individual Judge. The Court looks to the service providers to assist in giving definition to what is the best interest of the child at that time.

Once the petition is filed, it is screened by a Juvenile Officer who determines that the petition has sufficient merit to support a finding of abuse or neglect.

After the Clerk of Court receives the petition, an initial hearing is held within forty-eight hours after the time a child is placed in protective custody and within seventy-two hours if the child is not in protective custody. The initial hearing is conducted informally and is closed to the public. If the Court determines that there is probable cause to believe that the child has been abused , neglected, or abandoned, the Court may temporarily order the appropriate disposition. The disposition may

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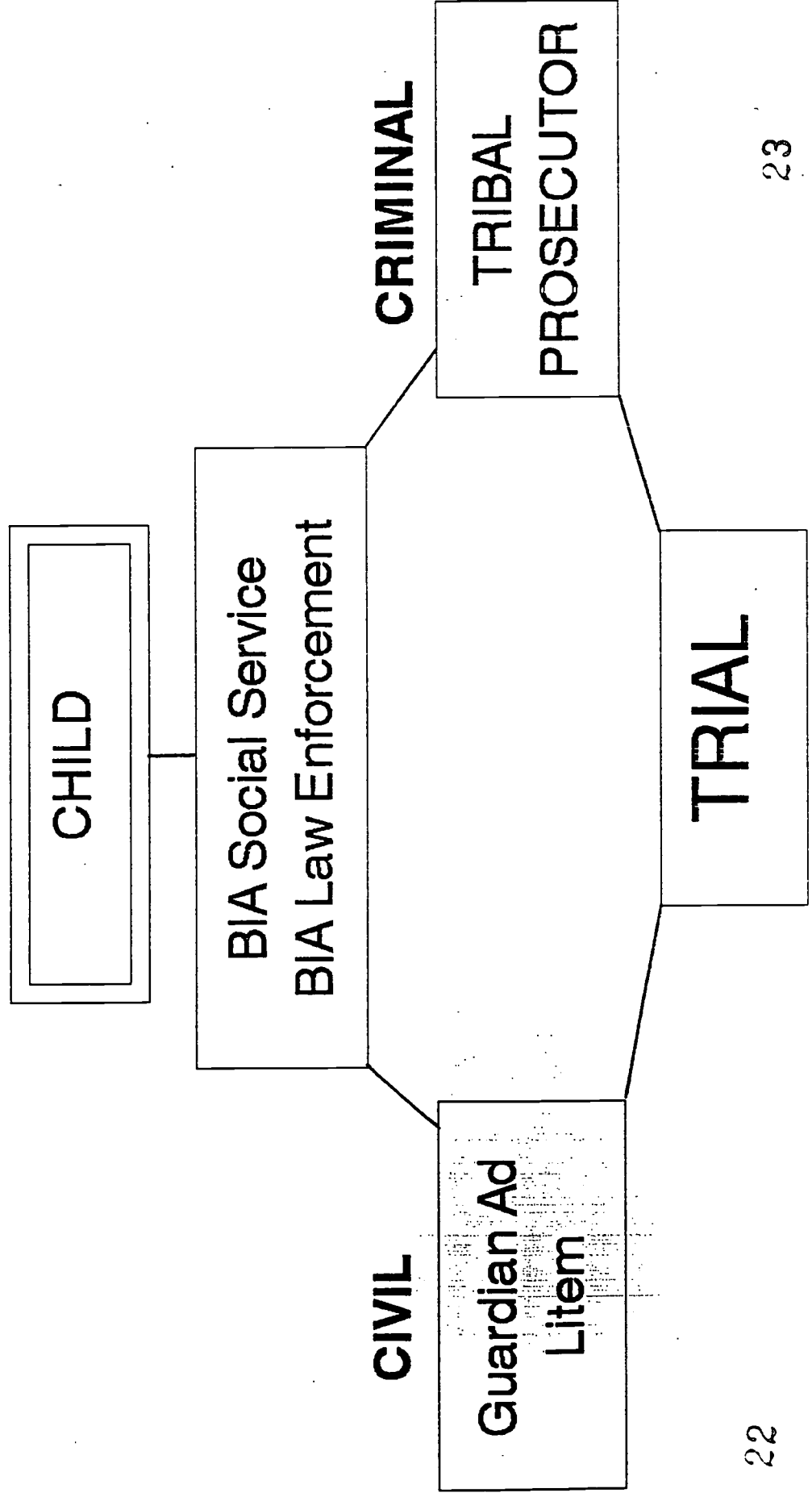
"Health and Human Services grant awarded to the Fort Peck Tribes for Family Preservation 1993.

include the child becoming a ward of the Court with the care and supervision of the child ordered to the social service agency; or the child being placed with an appropriate relative or to a Tribal or State licensed foster home. A fact-finding hearing is scheduled thirty days after the initial hearing.

A fact-finding hearing is to present evidence in form of testimony and written documentation to prove by clear and convincing evidence that the alleged abuse or neglect did in fact occur. If the Court finds by clear and convincing evidence, the Court receives recommendations from the GAL on behalf of all interested parties. The child will continue as a ward of the court, care and supervision continues with the social service agency and the child remains in placement. At this time, a Service Treatment Agreement is ordered by the Court. Social Services will utilize other resource agencies. This may include Indian Health Services, Spotted Bull Treatment Center, Family Advocacy Program, Sexual Abuse Victims Treatment Program, Victim Assistance Program, Youth Services Center, and traditional healers if requested.

Within ninety-days after the fact-finding hearing, a review hearing is held. The review hearing is to determine by clear and convincing evidence if the basis for the original removal is still in existence. Subsequent review hearings are held every six months. If the Court finds there is no longer clear and convincing evidence that grounds for removal exist, the Court orders the

# Legal System Process on Child Abuse/Neglect



return of the child to the parent, guardian or custodian and the issue is closed.

#### TRIBAL RESOURCES

The following is a roster of the various prevention and treatment programs for families and children at risk:

1. Sexual Abuse Victims Treatment (SAVTP) program has the primary objective to provide treatment to sexually abused victims and their families from a holistic approach which is culturally relevant. A licensed counselor provides individual, group and family therapy. It is difficult for family members to take part in the healing process of their children. There are many reasons why families do not take part in the healing: denial, lack of trust with agencies involved in the investigation, no transportation, and failure to understand the circumstances of why the abuse happened to their child. The program encourages extended family members to participate in their recovering process. The program assists the family in seeking their own traditional means, if requested.

2. Family Advocacy Program (FAP) provides intensive home based outreach services focusing on child abuse, neglect and domestic violence. The FAP has a family counselor on staff who provides individual therapy to victims of domestic violence and family counseling. The Family Support Specialist is responsible to work

with families who are at risk of having their children removed and placed. As was previously mentioned, the Guardian Ad-Litem acts on behalf of the Tribe and on behalf of the best interest of the children. The GAL is responsible for the processing of all legal matters in the areas of abuse and neglect through the Tribal Court.

3. Child Protection and Victims Assistance Program<sup>12</sup> (VAP) provides personal and legal advocacy for children who are sexually and physically abused. The VAP intervenes by providing general information on rights and remedies that may be available to the victims. VAP assists in filing of the Victims Compensation Claim forms which are sent to the Montana State Victims Program for reimbursement for services rendered. VAP assists crime victims in participating in criminal justice proceedings, including transportation to court and other escort services as needed. The VAP refers victims to support groups and coordinates activities when requested. The VAP provides transportation to battered women seeking off reservation protection services.

4. Share the Vision<sup>13</sup> (STV) is a program which is responsible for the development of a model, multi-disciplinary approach focusing on

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<sup>12</sup>Grant awarded to the Fort Peck Tribes by the Montana Board of Crime Control 1990, to provide direct services to Victims of Crime.

<sup>13</sup>Grant awarded to the Fort Peck Tribes by the United States Department of Justice, Children's Justice Act 1993.

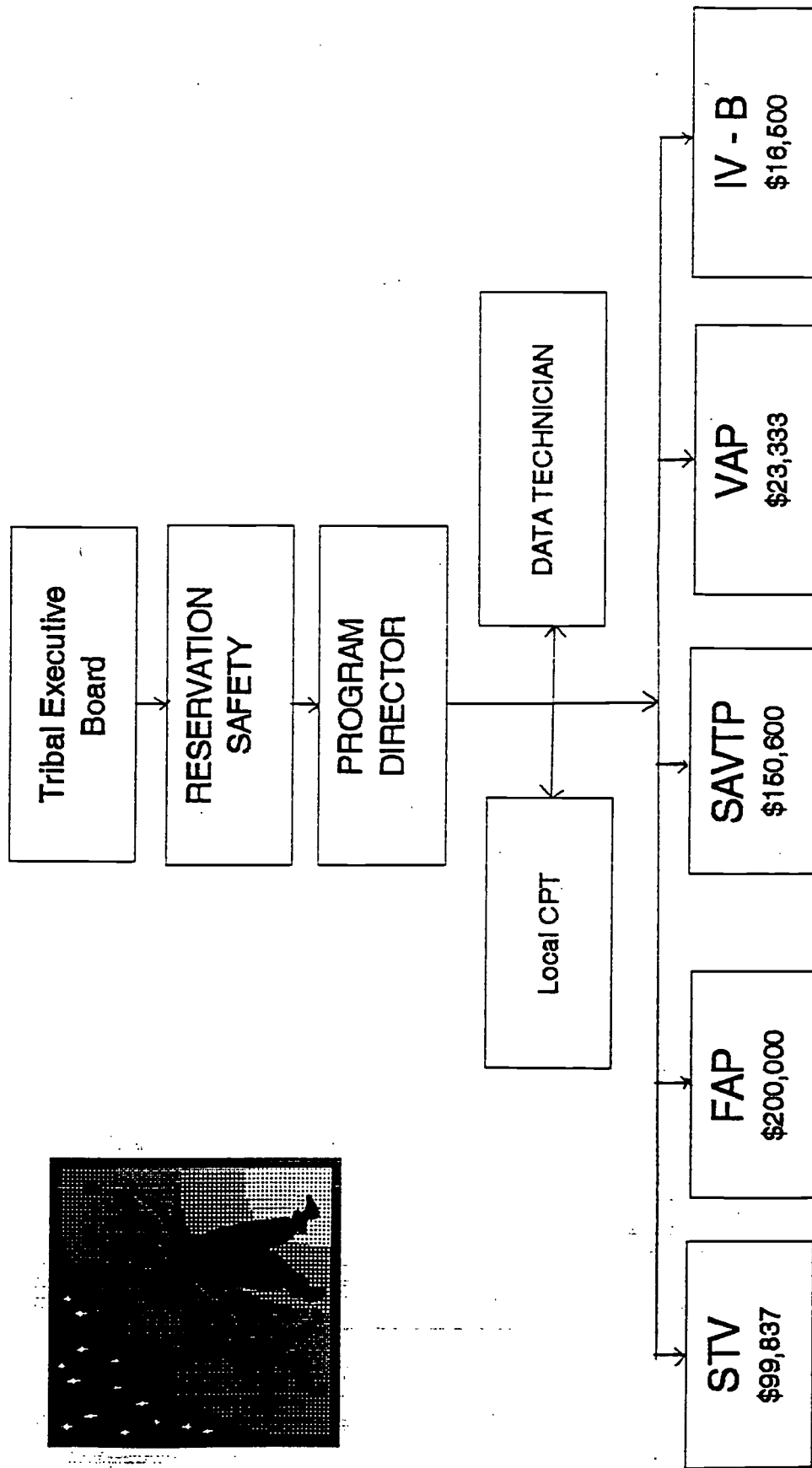
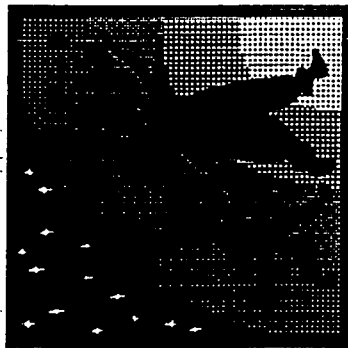
investigation and Court preparation. The goal of the (STV) is to expedite child abuse investigations by supplementing the current process with an added licensed counselor/clinical interviewer.

In addition to these there are numerous other agency and program resources which impact upon the child and family. These are graphically shown on the next page.



# FORT PECK TRIBES

## "Center of Services For Children & Families in Crisis"



Total staff = 10

Total \$\$ = \$490,270.00

## SOCIAL ENVIRONMENT

The agencies who are responsible for the protection of children many times experience difficulties with families coming back into the system. In part, this can be traced to the welfare system. For example, on the first of each month when General Assistance and AFDC payments are made food and clothing are not purchased for the children. Bills are ignored, and children are left unsupervised. This disregard for the children activates social services intervention and court action. Also, per capita payments tend to make families race to the Court to initiate proceedings to regain custody of their children. Per capita payments are provided by the Tribal government. Another factor to be considered is the Fort Peck Housing regulations, which require that after children are removed and placed by a Social Service Agency the parents are to be evicted. The Tribal Court's standards before returning the children is to have adequate housing. The Fort Peck Housing Authority, in turn, cannot award housing without the children.

In conclusion, the influence of the family on a child is the child's first source of information and a model for how children experience relationships. This helps a child learn to communicate

and develop his/her personality. The family teaches a child ways to live and gives the child a sense of belonging. Without the involvement of the family it may be likely that a child may grow up unhealthy and at risk. Economic conditions are another factor because of high and growing unemployment rates which limit a secure and stable livelihood. This may be the leading factor that adds to the continual of child abuse and neglect.

I have portrayed an overview of the developments and obstacles that lie in the areas of prevention and treatment of children and families. The programs in place are trying to halt victimization. We are now looking at third and fourth generation abusers. The government agencies cannot afford to hinder families; they must support families on the road to create healthier families for the future of the Fort Peck Assiniboine and Sioux Tribes.

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